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Support
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of IFB Cancellation After Bid Opening]

FILE: B-199514

DATE: February 11, 1981

MATTER OF: Rivera General Contracting

DIGEST:

Cancellation of IFB after bid opening
is proper where specification does
not reflect Government's minimum needs.

(Rivera General Contracting (Rivera) protests the cancellation of invitation for bids (IFB) DAAB07-80-B-A061, issued by the United States Army Communications and Electronics Materiel Readiness Command (CERCOM), Fort Monmouth, New Jersey.

(The IFB was issued for wall lamination and ancillary items, and Rivera was the lowest of three bidders. Subsequently, the contracting activity informed Rivera that the procurement was being canceled because of changes in the Government's requirements. Rivera contends that the true reason for cancellation was the contracting activity's belief that a minority and a female-owned company could not satisfactorily complete work under the contract and was not based on a change in the Government's requirements.)

Based upon our review of the record, the protest is denied.

(The contracting activity states that material deficiencies in the specifications and events subsequent to bid opening changing the requirements required the modification of the procurement.) The IFB required general construction work without clarifying and defining the highly technical nature of the construction for a laboratory clean room facility. As an example, the IFB failed to describe adequately the specifications of a required

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air shower. In addition, it was learned after bid opening that technical support personnel could not install a necessary air filtration system simultaneously with the lamination and that work was required to be added. Further, the IFB failed to indicate appropriate evaluation criteria for the bid samples called for in the IFB, which two of the three bidders, including Rivera, did not submit. (The third bidder was determined to be nonresponsive.) Finally, another requirement for clean room construction was in the solicitation preparation stage, and combining the work with the instant work was considered beneficial. The readvertisement reflected changes to correct the above deficiencies and added requirements.

(Defense Acquisition Regulation (DAR) § 2-404.1(a) (1976 ed.) provides that after opening award must be made to the low, responsive, responsible bidder unless there is a compelling reason to reject all bids and cancel the solicitation, such as inadequate or ambiguous specifications, revision of specifications, or cancellation is clearly in the best interest of the Government.

(Our Office has stated that changing the requirements of a procurement after the opening of bids to properly express the minimum needs of the Government constitutes a compelling reason for cancellation of a solicitation.) See Therm-Air Mfg. Co., Inc., B-194185, et seq., November 20, 1979, 79-2 CPD 365; Murphy Machinery Company, B-192760, February 9, 1979, 79-1 CPD 90. Contracting officers have broad discretion in deciding whether to cancel a solicitation, and we will not overturn such a decision unless there is an abuse of that discretion. See Aul Instruments, Inc., B-195887, February 6, 1980, 80-1 CPD 98.

(The record does not support Rivera's contention that the agency canceled the IFB because it did not believe that a minority and a female-owned company could complete work under the contract.) To the contrary, the record discloses that Rivera had previously received other contracts from the same contracting office and that the protester was found to be responsible to perform the advertised work under the IFB prior to the cancellation.

As for the agency's bases for cancellation, we conclude that the solicitation deficiencies amply justified the cancellation. While Rivera may disagree with the Army's decision to cancel the IFB, Rivera has introduced no evidence to establish that the contracting agency abused its discretion.

Accordingly, the protest is denied.

Milton J. Fowler

for the Comptroller General
of the United States